

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUANA GONZALEZ, ET AL.,

Plaintiffs,

- against -

DIGITAL EQUIPMENT CORPORATION,

Defendant.

MEMORANDUM

92-CV-5230

93-CV-5246

94-CV-1427

94-CV-3502

94-CV-5789

97-CV-7165

98-CV-1100

(JBW)

APPEARANCES:

For the Defendant:

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Beth D. Jacob, Esq.
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For the Plaintiffs:

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Jack B. Weinstein, Senior District Judge:

Defendant opposes the introduction of worker's compensation claims filed by some of the plaintiffs, arguing that were such claims considered by the jury for causation purposes, they would constitute hearsay, not within an exception. Plaintiffs contend that the claims are admissible to show that defendant should have had notice that there were possible issues arising with respect to their keyboards that merited attention.

If plaintiffs wanted to rely on the medical conclusions in the reports for causation purposes, they could have called the doctors who filled out the forms as witnesses. Using the medical conclusions of causation directly from the workers compensation reports at this point would be a violation of the hearsay rules.

The workers compensation claims can be admitted for notice purposes. See Trzeciak v. Apple Computers, Inc., 94 cv 1251, 1995 WL 20329, *6 (S.D.N.Y. 1995); see also Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1498-1502 (11th Cir. 1985); Laing v. American Honda Motor Co., 628 So.2d 196, 203 (La.App.Ct. 1993); In re Eighth Judicial District Asbestos Litigation, 595 N.Y.S.2d 574 (4th Dep't 1993).

The jury has been instructed that compensation claims cannot be considered on the causation issue, even if the medical professionals or plaintiffs indicated on the claim forms what they thought caused the injury.

For purposes of the final jury charge, the following instruction appears to be appropriate:

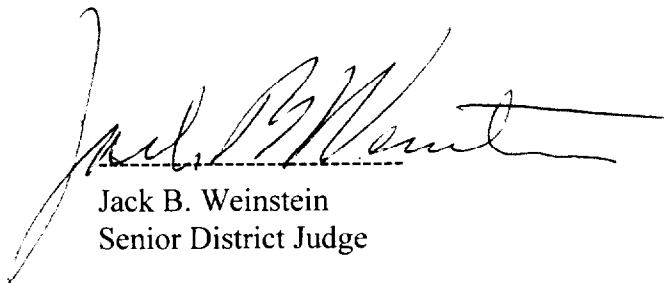
Evidence of workers' compensation claims filed by some of the plaintiffs was presented.

You are not to consider that evidence as proof that any of those claimed injuries was

caused by a defect in any computer equipment or were job connected. The evidence may be considered for the limited purpose of determining whether the defendant should have had notice of possible injuries from keyboards and whether the defendant reasonably should have taken steps to determine dangers from use of keyboards, if any, and, to reduce those dangers if any.

The parties are requested to comment.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jack B. Weinstein", is written over a horizontal dashed line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack B. Weinstein
Senior District Judge

Dated: June 3, 1998
Brooklyn, New York